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Letter dated 8 November 2005 from the Permanent Representative of Austria to the United Nations addressed to the Chairman of the Committee

I am writing to you with reference to your letter dated 8 September 2005, by which you requested further information/clarifications on the information provided by Austria in its first report on the implementation of Security Council resolution 1540 (2004), submitted with the note verbale dated 28 October 2004. Please find attached to this letter the information requested (see annex).

As to the additional information identified in the official public data provided by Austria to the United Nations and the International Atomic Energy Agency referred to in paragraph 3 of your letter dated 8 September, Austria has no objection to its inclusion in the matrix developed by the Committee.

Let me assure you that Austria stands ready to provide any further information that might be required and will continue to engage in a transparent and open dialogue with the Committee.

(*Signed*) Gerhard **Pfanzelter**
Ambassador

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Annex to the letter dated 8 November 2005 from the Permanent Representative of Austria to the United Nations addressed to the Chairman of the Committee

Austrian national report on the implementation of Security Council resolution 1540 (2004)

Additional information requested in S/AC.44/2005/DDA/OC.75 of 8 September 2005

General remarks:

- The Foreign Trade Act of 1995 has been replaced by the **Foreign Trade Act of 2005,** BGBl. (Federal Law Gazette) I Nr. 50/2005; entry into force on 1st October 2005.
- **Sanctions** formerly laid down in section 15 of the Foreign Trade Act of 1995 are now laid down in **section 37 of the Foreign Trade Act of 2005.**
- Replace "Federal Ministry for Economic Affairs and Labour" by "**Federal Ministry of Economics and Labour**" in the matrix.

ad matrix:

General remark:

The Austrian "Strafgesetzbuch" is generally translated as "Criminal Code" in the matrix. In the Austrian National Report on implementation of UNSCRes 1540 the more common term "Penal Code" was used. There is, however, no objection against the use of the term "Criminal Code". Furthermore, the Austrian National Report on implementation of UNSCRes 1540 mentions section 64, para 4b and section 177a of the Penal Code on page 4, whereas the matrix generally refers to page 5 in this regard. Equally, the National Report mentions section 177b of the Penal Code on page 8, whereas the matrix generally refers to page 6 and 7.

OP 2 - Biological Weapons (BW) (matrix on page 3)

- Entries 1 to 5: YES; Austrian Foreign Trade Act of 2005 - Section 14 para 1 lit 3; BGBl. (Federal Law Gazette) I Nr. 50/2005 (entry into force on 1 October 2005)
- Entries 1 to 5: YES; Austrian Foreign Trade Act of 2005 - Section 14 para 1 lit 1 and 2; BGBl. (Federal Law Gazette) I Nr. 50/2005 (entry into force on 1 October 2005)
- Entries 4, 6 and 8: Tick YES box in enforcement column as the activities of stockpiling / storing, transport and use of biological weapons are included in the term "possess" of section 177a of the Penal Code and therefore penalised.
- Entry 13: Tick YES box in enforcement column. As the above-mentioned activities (entries 4, 6 and 8) are penalised by section 177a of the Penal Code, the involvement of non-state actors in those activities is penalised as well.

OP 2 - Chemical Weapons (CW) (matrix on page 4)

- Entries 4, 6 and 8: Tick YES box in enforcement column as the activities of stockpiling / storing, transport and use of chemical weapons are included in the term "possess" of section 177a of the Penal Code and therefore penalised.

- Entry 13: Tick YES box in enforcement column. As the above-mentioned activities (entries 4, 6 and 8) are penalised by section 177a of the Penal Code, the involvement of non-state actors in those activities is penalised as well.

OP 2 - Nuclear Weapons (NW) (matrix on page 5)

- National Legal Framework: Section 1 of the Constitutional Law on a Non-Nuclear Austria ("Bundesverfassungsgesetz für ein atomfreies Österreich") of 13 August 1999, BGBl. (Federal Law Gazette) I Nr. 149/1999, prohibits the production, storage, transport, test and use of nuclear weapons in Austria and the creation of storage facilities for such weapons.

- In addition, all activities penalised by section 177a of the Penal Code are thereby prohibited implicitly. Therefore, section 177a of the Penal Code, together with section 1 of the Constitutional Law on a Non-Nuclear Austria, constitute the national legal framework for prohibiting persons or entities to engage in nuclear weapons-related activities.

- Entry 4, 6 and 8: Tick YES box in enforcement column as the activities of stockpiling / storing, transport and use of nuclear weapons are included in the term "possess" of section 177a of the Penal Code and therefore penalised.

- Entry 13: Tick YES box in enforcement column. As the above-mentioned activities (entry 4, 6 and 8) are penalised by section 177a of the Penal Code, the involvement of non-state actors in those activities is penalised as well.

- Entry 14 should read "Nuclear Non-Proliferation Act 1991, amended in 1996".

OP 3 (a) and (b) - Account for / Secure / Physically protect NW including Related Materials (matrix on page 10)

Safeguards on nuclear material, entries 1-4:

- Please note that Commission Regulation 3227/1976 has been replaced by Commission Regulation 302/2005.

- Entry number 4: Measures to account for transport of nuclear material are also covered by the Commission regulation.

Physical protection of nuclear material - entries 6-13:

- Entry 6: The physical protection provisions in Part 3 of the Nuclear Non-Proliferation Act also cover production of nuclear material (along with: mining, storage, transport, delivery, supply, processing, possession, import, export, transit, use and disposal).

- Entries 11-12: Section 177b of the Penal Code covers all offences related to violations of physical protection provisions.

- Entry 15: National regulatory authority for safeguards and export controls is the Federal Ministry of Economics and Labour, for physical protection the Federal Ministry of the Interior.

OP 3 (matrix on page 11)

- Entry 21: tick YES box and delete question mark; ad national legal framework: insert "interministerial committee".

OP 3 (c) and (d) and related matters from OP 6 and OP 10 - Controls of BW including Related Materials (matrix on page 13)

- Entry 19: YES; Austrian Foreign Trade Act of 2005.

- Entries 21 – 24: Tick YES box in enforcement column as these activities are equally covered by section 177a of the Penal Code as are "Transit control" (entry 20) and "Control of importation" (entry 25).

- Entry 27: delete question mark as new Austrian Foreign Trades Act already in force.

OP 3 (c) and (d) and related matters from OP 6 and OP 10 - Controls of CW including Related Materials (matrix on page 15)

- Entries 21 – 24: Tick YES box in enforcement column as these activities are equally covered by section 177a of the Penal Code as are "Transit control" (entry 20) and "Control of importation" (entry 25).

- Entry 27: delete question mark as new Austrian Foreign Trades Act already in force.

OP 3 (c) and (d), OP 6 and OP 10 - Controls of NW including related materials (matrix on page 16 and 17)

- Entries 3, 5 and 27: Please note that the Foreign Trade Act of 1995 has been replaced by the Foreign Trade Act of 2005, BGBl. (Federal Law Gazette) I Nr. 50/2005, entry into force on 1 October 2005.

- Entry 7: Individual Licensing is mandatory in the case of trigger list items (items listed in the Zangger and NSG Part I lists), according to Article 21 of EC Regulation 1334/2000 in connection with Annex IV of the Regulation (the current version of the Annex is contained in EC Regulation 1504/2004).

- Entry 8: General Licensing is possible for all items not listed in Annex IV. A Community General Export Authorisation exists for a limited number of countries (Annex II). Otherwise individual licensing is the rule. There are currently no Austrian national general licences.

- Entry 19: Intangible transfers are covered by the licensing requirement of EC Regulation 1334/2000.

- Entries 21 – 24: Tick YES box in enforcement column as these activities are equally covered by section 177b of the Penal Code as are "Transit control" (entry 20) and "Control of importation" (entry 25).

- Entry 25: Delete reference to page 2 in remarks column.

- Entry 27: The new Foreign Trade Act entered into force on 1 October 2005.

OP 6, 7 and 8 (d) - Control lists, Assistance, Information (matrix on page 18)

- Entry 2: YES; Foreign Trade Decree.

ad Austrian National Report on Implementation of UNSCR 1540

- Page 4 lit 23: Add "Czech Republic".

- Page 4 Operative Paragraph 2 - section 2 first sentence: Add "and NW".

- Page 4 Operative Paragraph 2 - section 3 first sentence: Replace "section 17" by "section 37".

- Page 6 Planned action second indent reads as follows: "It inter alia further strengthens the control on weapons as well as dual use goods and also further strengthens the prevention of their proliferation."

- Additional planned action: According to a draft bill for a Penal Code Amending Act 2006, the behaviour described in section 177b of the Penal Code will be criminalised also in case of negligent conduct of the perpetrator (new section 177c of the Penal Code; as opposed to 177b of the Penal Code, which covers only intentional acts):

Fahrlässiger unerlaubter Umgang mit Kernmaterial oder radioaktiven Stoffen

§ 177c. (1) Wer fahrlässig entgegen einer Rechtsvorschrift oder einem behördlichen Auftrag eine der im § 177b Abs. 1, 2 oder 3 mit Strafe bedrohten Handlungen begeht, ist mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

(2) Wird durch die Tat die im § 171 Abs. 1 genannte Gefahr herbeigeführt, der Tier- oder Pflanzenbestand erheblich geschädigt oder eine erhebliche Verschlechterung des Zustands eines Gewässers, des Bodens oder der Luft bewirkt, so ist der Täter mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen. Hat die Tat eine der im § 170 Abs. 2 genannten Folgen, so sind die dort angedrohten Strafen zu verhängen."